FILED
MAR 6 1995

No. 95-1131 (4)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

CHRYSLER CORPORATION, and
AMERICAN MOTORS CORPORATION,

Petitioner,

v.

ROBERT W. KEARNS,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

RESPONDENT'S STRONGEST OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF ARNOLD, WHITE & DURKEE IN SUPPORT OF RESPONDENT

Robert W. Kearns, Ph.D.
Manufacturing-Inventor:
U.S.Patent 3,351,836
et cetera
"Windshield Wiper System
with Intermittent
Operation."
(410) 827-9337 (Tel/Fax)

Purpose

The purpose of this Opposition is to refute the sanctimonious urgings upon this U.S. Supreme Court by Arnold, White & Durkee Corporation, and, to have the Justices join Dr. Kearns in denying leave for Arnold, White & Durkee Corporation to file brief amicus.

Background

Arnold, White & Durkee Corporation ("AWDC") personnel were knowledgeable that Dr. Kearns found no difference between regulatory review and judicial review. Dr. Kearns knew and William Durkee knew Dr. Kearns knew that Professor Chisum has stated in his book, REMEDIES FOR PATENT INFRINGEMENT, page 393:

> A patent owner's right to monetary and injunctive relief is restricted by the equitable doctrines of laches and estoppel, the statutory six-year damage limitation, and the marking requirements.

Dr. Kearns had met those conditions. Continuing Chisum page 397:

> The possibility of post-expiration equitable relief was raised but not resolved in *Roche Prods., Inc.* v *Bolar Pharmaceutical Co.*, 733 F.2d 858, 221 U.S.P.Q. 937 (Fed. Cir. 1984).

Dr. Kearns' patent litigation troubles began in October, 1963 [32 years ago] and his formal patent trial litigation troubles in March, 1978 [17 years ago]. To continue as a Manufacturing-Inventor, Dr. Kearns needed 35 U.S.Code § 283 equitable injunctive relief against those who infringed his patents. Not against every citizen in the USA - simply against those who infringed his patents.

The culmination of all the inventing, complaint, pleadings, motions, discovery, and depositions occurs in the pre-trial order. Dr. Kearns discharged AWDC for causes the morning that AWDC intended to sign a pre-trial order that did not include § 283 relief.

The role of § 283 relief
to this U.S. Supreme Court

The legal position of this Court has long been

> "[I]t is not the private use but ... the public interest which is dominant in the patent system[1]." *Mercoid Corp.* v. *Mid-Continent Co.*, 320 U.S. 661, 665. In later years, this Court improved its view of the contributions of inventors: *Dawson Chem. Co.* v. *Rohm and Haas Co.*, 448 U.S. 176, 221 (1980), reflects a shift towards recognition that the patent holder's rights and the public interest should be accorded equal weight in deciding patent cases.

But where in the law is the public interest remedy for infringement?

> Title 35 U.S. Code § 281.
> **Remedy for infringement of patent**
>
> "A patentee shall have remedy by civil action for infringement of his patent."

§ 281 proffers a remedy only to the inventor - thus the public interest must be made available through the inventor. What is available to the inventor (and public) from the inventor's trial? The patentee can only receive **§283 Injunction** relief and **§284 Damages** relief. **§284 Damage** relief is money to the inventor. Neglecting taxes, that money to the inventor does not return to the USA public its interest in the USA invented-product.

Where the invented-product is infringed and sold in high volume

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[1] *Pennock* v. *Dialogue*, 2 Pet. 1; *Kendall* v. *Winsor*, 21 How. 322, 329; *Adams* v. *Burke*, 17 Wall. 453; *Motion-Picture Co.* v. *Universal Film Co.* 243 U.S. pp. 510-511; *Morton Salt Co.* v. *G.S. Suppiger Co.*, 314 U.S. 488, 493; *United States* v. *Masonite Corp.*, 316 U.S. 265, 278 ... The patent is a privilege. But it is a privilege which is conditioned by a public purpose ..."

in a market segment controlled by the infringer[2] within the worldwide market, the only place left for the public to gain its rightful interest from the invented-product under 35 U.S.C. is through a §283 Injunction remedy to the inventor.

For AWDC to proffer a Pre-Trial Order that does not include § 283 equitable relief is for AWDC to abandon the public and seek only money for AWDC. Dr. Kearns is not inspired to invent in order to provide money to AWDC. Const. Art I § 8 Cl 8 fails to 'promote' under those conditions. AWDC actions are unConstitutional! Inventors do not invent for money. Dr. Kearns invented to reduce the traffic deaths occurring in wet weather. 55,000 die on our roads each year with more than half of the accidents occurring in wet weather yet the weather is not wet half the time!!

In this new age of General Agreement on Tariffs & Trade ("GATT"), when this Court does not grant such § 283 equitable remedies the economy of the USA will join that of Mexico. An injunction would enable the Dr. Kearns to supply the present markets in the USA with the aid of his foreign patents.

Although the USA infringers could try to sell the invented product to others operating in their own segment of the worldwide market, they do not have the interest, bases for a legal right nor the patent base on which to support the effort. But if Dr. Kearns manufactured and made those sales, as is his Constitutional right, the public would gain the extra jobs income; the benefits of more

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[2] What citizen from the public can meet the needs of Chrysler for 2,250,000 Intermittent Windshield Wiper Systems ("IWWS")? None but Kearns *Engineers*.

balanced/surplus foreign trade; higher purchasing power for each dollar; and, a higher standard-of-living. With each USA and foreign infringer having control of its segment of the worldwide IWWS market, upon expiration of Dr. Kearns' patents, the inequality in favor of 'foreign' countries is locked-in to the permanent trade deficit result. There is no other person than Dr. Kearns with the patent baseg to achieve the USA market. That market, being 50% of the worldwide market, offers economies of scale to supplement Dr. Kearns' foreign patents. Dr. Kearns is the only person who can provide a 4.8% boost in USA trade to the public (A-1). For this Court to be consistent with its pronouncements *supra* it must start allowing § 283 injunctive relief.

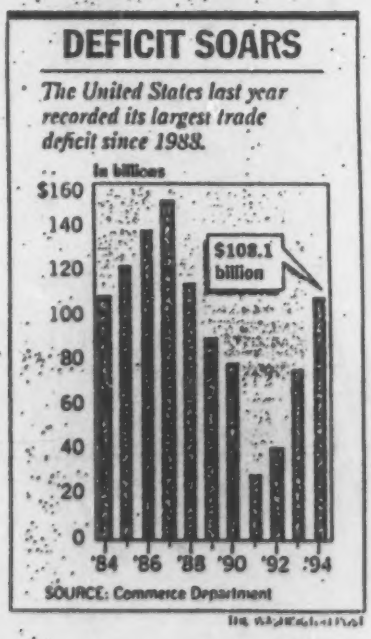
What is the path to § 283 relief? There are more than 100,000 U.S. patents issued each year that represent opportunities for new businesses and jobs. Of those, on average, but 1,019 file a Complaint (that don't include § 283). Of those filing a Complaint but 89 start trial. District Judge Cohn has 19 out of 20 settle (he says he couldn't handle the load otherwise). That leaves 4+ out of 100,000 'exclusive' business opportunities who finish trial to be eligible for § 283 relief. Bob Kearns has completed that path twice for Dr. Kearns and the public - **and has been denied equitable relief both times** in the District Court, seemingly, without the CAFC or U.S. Supreme Court caring about the public! The principles of equity to the public shout for an equitable injunction against Ford, Chrysler, General Motors and American Motors and a denial of AWDC brief amicus. This Supreme Court is responsible to promulgate the Rules and law to aid the public.

The Washington Post

SATURDAY, FEBRUARY 18, 1995

U.S. Trade Deficit Rose Sharply Last Year

$108.1 Billion Is Largest Imbalance Since '88



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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of RESPONDENT'S STRONGEST OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF ARNOLD, WHITE & DURKEE IN SUPPORT OF RESPONDENT has been sent by first class mail to

Chrysler Corp. via
Robert P. Taylor
Pillsbury Madison & Sutro
225 Bush Street
San Francisco, CA 94104
(415) 983-1000

AWDC via
William D. Durkee
Arnold, White & Durkee
750 Bering Drive
Suite 400
Houston, Texas 77057

I do solemnly declare and affirm under the penalties of perjury that these are the only service that need be made.

Robert W. Kearns

Robert W. Kearns

Subscribed this 1st day of March 1995.